

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 23rd October, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Incident to the State's ongoing construction of the traffic interchange improvements located at US 60 and Dobson Road, the City requests the State include in its existing construction contract, the installation of aesthetic enhancements on the pedestrian bridge fencing to be placed on the Dobson Road bridge, herein referred to as the "Project". The costs of the Project are detailed on Exhibit A (Supplemental Agreement Change Order #2) in an amount estimated at \$59,123 00, attached hereto and made a part hereof, and are all at the City's expense. The parties herein agree that the State will, by change order, incorporate the City's enhancements to the State's existing construction contract. Said costs will include a fixed fee of 14% for construction engineering and administration costs.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows.

NO. 26417
Filed with the Secretary of State
Date Filed: 10/23/03
Janice K. Brewer
Secretary of State
By: Timothy D. Greenwald

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement, invoice the City in the amount of \$59,123.00 for the estimated costs of the Project, including a fixed rate of 14% for construction engineering and administration. Coordinate with the City's artist and incorporate City design review comments.

b. Agree to be authorized agent for the City. On behalf of the City and with written concurrence, and by change order, incorporate the City's enhancements to the State's existing construction contract. Administer same and make all payments to the contractor. Confer with the City on any Project related contract modifications. Be responsible for any contractor claims for extra compensation attributable to the State.

c. Upon completion of the construction of the Project, invoice or reimburse the City any difference between the amount paid by the City and the actual costs for construction, including a fixed cost of 14% for construction engineering and administration costs for the Project.

d. Provide the City with and request change orders on the Project as requested by the contractor. No change order shall be granted without the permission of the City.

2. The City will:

a. Upon execution of this agreement, and receipt of an invoice, remit to the State \$59,123.00, for the estimated cost of the Project including a fixed rate of 14% for construction engineering and administration, as shown on Exhibit "A". Provide the State or its consultant(s) appropriate artistic input.

b. Designates the State as authorized agent for the City. Be responsible for actual costs of the Project and any liability which may be a result of the Project, with the exception of any negligence or willful conduct on the part of the State.

c. Be responsible for any design consultant and/or contractor claims for extra compensation attributable to the City. Should the City withdraw its proposed plans for whatever reason, the City shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for the City's cancellation is due to the State's failure to comply with its obligations thereunder.

d. Reimburse the State if the cost of the Project exceeds the amount of the City's remittance, upon completion and acceptance of the Project, within 30 days after receipt of an invoice for the actual costs for construction, including a fixed cost of 14% for actual costs for construction engineering and administration costs for the Project.

e. Provide maintenance to the Project, upon completion and acceptance of the Project by the State, including but not limited to: Maintenance, repair and graffiti control to the aesthetic enhancement features, all surfaces installed at the City's request.

f. Not make any changes, additions or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual."

g. Review and approve or deny any requests for change orders associated with the Project. Approval of the change orders shall not be unreasonably withheld.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State.

2. The terms, conditions and provisions of this agreement shall remain in full force and effect for a period of five (5) years from the effective date, unless this Agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless either party shall give notice in writing to the other not less than one (1) month nor more than three (3) months prior to the initial or renewed expiration date. Further, this agreement may be terminated by the State at any time upon sixty (60) days written notice. It is understood and agreed that, in the event this agreement is terminated by the City, the State shall in no way be obligated to maintain said aesthetic enhancement.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

6. **Non-Availability of Funds:** Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712-7424

City of Mesa
City Manager
20 East Main St. #750
Mesa, AZ 85211

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

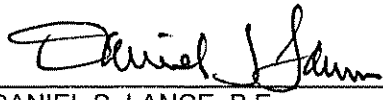
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF MESA

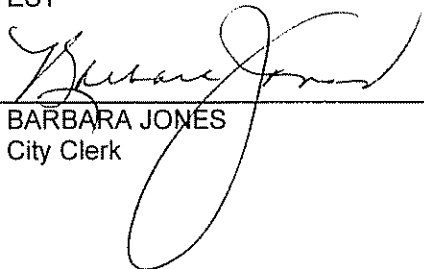
By 
MICHAEL HUTCHINSON
City Manager

STATE OF ARIZONA

Department of Transportation

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By 
BARBARA JONES
City Clerk

G:02-187-ENVIR-MESA-Enhancements
22Aug2003-jw

ARIZONA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SUPPLEMENTAL AGREEMENT

Page 1 of 1

Change Order No. 2 Force Account No. _____
FA _____ Project No: CM-SIP-060-C(9) A Tracs No: H463801C ORG No: 7748

Name of Project: Mesa Drive I.I. (US-60) Contractor: Meadow Valley Construction, Inc.

REQUEST: To establish 9020036, Bridge Fencing (Aesthetic Enhancement) as L.Sum.

REASON: At the request of the City of Mesa, aesthetic enhancements shall be installed on the pedestrian bridge fence as detailed in the attached plans and accompanying correspondence.

COST ANALYSIS:

Item No	Sect	Description	Unit	Quantity	Unit Price	Revised Amount
9020036	1	Bridge Fencing (Aesthetic Enhancement)	L.Sum	59,122.88	\$1.00	\$59,122.88

An Extension of Contract Time of 0 Days is authorized as part of this Supplemental Agreement. All work is to be completed as shown on the plans in accordance with the Standard Specifications or other applicable documents.

TOTAL DIFFERENCE

PLUS	MINUS
\$59,122.88	

Date 10/1/02 Date 10-3-02 Date _____ Date _____
Submitted J. A. Approved Kith Neth Approved _____ Checked _____
RESIDENT ENGR. CITY OF MESA ASST DISTRICT ENGINEER FIELD REPORTS

For Valuable Consideration, it is mutually agreed that the matter detailed above shall be done and payment made as shown herein for a Supplemental Agreement Change Order, all in accordance with the terms of the contract. For work being performed as a Supplemental Agreement Force Account Request, final payment shall be made as stipulated in the Standard Specifications and its supplements upon completion of said work.

Date 10-2-02 Date _____ Date _____
Approved for Meadow Valley Construction, Inc. Approved for State of Arizona Approved with/without Federal Participation
By Perry Powell By _____ By _____
PERRY POWELL, DISTRICT ENGINEER FEDERAL HIGHWAY ADMINISTRATION

RESOLUTION NO. 8104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR AESTHETIC ENHANCEMENTS AT THE SUPERSTITION FREEWAY (US 60) AND DOBSON ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

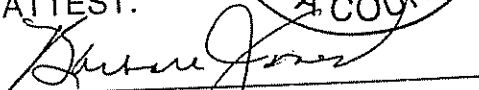
Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for Aesthetic Enhancements at the Superstition Freeway (US 60) and Dobson Road; is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

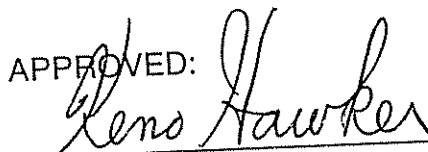
PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 22nd day of September, 2003.



ATTEST:


City Clerk

APPROVED:


Mayor

APPROVAL OF THE MESA CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, among the STATE OF ARIZONA, Department Of Transportation and the CITY OF MESA, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 29th day of September, 2003.

Debi Spurr

Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

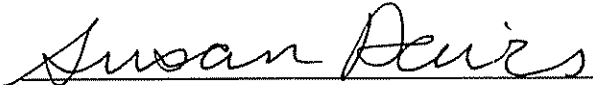
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0216TRN (JPA 02-187), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED October 16, 2003.

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.